

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FREDERICK W. ADKINS,

Petitioner,

vs.

DWIGHT NEVEN, *et al.*,

Respondents.

Case No. 2:13-cv-02170-JCM-PAL

ORDER

This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner. The matter previously came before the court on a motion to dismiss the amended petition. By order filed December 7, 2016, the court dismissed the following claims as plainly meritless: (1) the Eighth Amendment claim in ground 1; (2) the Fifth and Eighth Amendment claims in ground 3; and (3) ground 4 in its entirety. The court also determined that the following claims are unexhausted: (1) the claim in ground 1 that petitioner was denied a due process right to not be subjected to involuntary administration of narcotic and anti-psychotic medications; (2) claims in ground 1 based upon an allegation that medications were injected into petitioner by force several times the day of his plea, including just prior to the hearing; and (3) ground 2 in its entirety. The court denied petitioner's motion for a stay and abeyance because petitioner failed to establish good cause for his failure to exhaust the unexhausted claims. The court granted petitioner thirty days in which to file a motion for either the dismissal of the entire amended petition without prejudice or dismissal of the unexhausted claims without prejudice. (ECF No. 66).

1 On January 4, 2017, petitioner filed a “motion for partial dismissal without prejudice /
2 motion for protective order to exhaust.” (ECF Nos. 68 & 69). As to petitioner’s request for
3 dismissal without prejudice of the unexhausted claims, respondents have no objection. (ECF No.
4 71).

5 Respondents object to petitioner’s “motion for a protective order to exhaust.” (ECF Nos. 69
6 & 70). In the order filed December 7, 2016, the court denied petitioner’s motion for a stay and
7 abeyance to return to state court and exhaust petitioner’s unexhausted claims. (ECF No. 66). To the
8 extent that petitioner’s January 4, 2017 motion asks for a “protective order” wherein this court
9 would retain jurisdiction to address ground 2 once he returns to state court and exhausts state
10 remedies, petitioner’s motion is construed as a motion for reconsideration. Under Local Rule 59-1,
11 motions for reconsideration of an interlocutory order are governed by the Federal Rules of Civil
12 Procedure, Rule 59 or 60 as applicable. Such a motion “must state with particularity the points of
13 law that the court has overlooked or misunderstood.” Local Rule 59-1. Reconsideration may also
14 be appropriate if (1) there is newly discovered evidence that was not available when the original
15 motion or response was filed, (2) the court committed clear error or the initial decision was
16 manifestly unjust, or (3) if there is an intervening change in controlling law. Local Rule 59-1. A
17 motion for reconsideration is disfavored. Local Rule 59-2. The movant may not repeat arguments
18 previously presented unless it is necessary to explain controlling, intervening law or to argue new
19 facts. In his January 4, 2017 motion for reconsideration, petitioner cites no authority to support his
20 argument, and he presents no new evidence or clear error by the court. Petitioner presents no
21 intervening law or new fact justifying reconsideration of this court’s previous order. Petitioner’s
22 motion is denied.

23 **IT IS THEREFORE ORDERED** that petitioner’s motion for a protective order (ECF No.
24 69), construed as a motion for reconsideration, is **DENIED**.

25 **IT IS FURTHER ORDERED** that petitioner’s motion for dismissal without prejudice of
26 his unexhausted claims (ECF No. 68) is **GRANTED**. The following grounds are **DISMISSED**
27 **WITHOUT PREJUDICE**: (1) the claim in ground 1 that petitioner was denied a due process right
28 to not be subjected to involuntary administration of narcotic and anti-psychotic medications; (2)

1 claims in ground 1 based upon an allegation that medications were injected into petitioner by force
2 several times the day of his plea, including just prior to the hearing; and (3) ground 2 in its entirety.

3 **IT IS FURTHER ORDERED** that respondents shall have **thirty (30) days** from the date of
4 entry of this order to file their answer to the remaining grounds of the amended petition.

5 **IT IS FURTHER ORDERED** that petitioner shall have **thirty (30) days** after the filing of
6 the answer to file a reply.

7 Dated April 4, 2017.

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11 UNITED STATES DISTRICT JUDGE
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